



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC589]

Atlantic Highly Migratory Species; Essential Fish Habitat 5-Year Review

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of the Draft Atlantic Highly Migratory Species (HMS) Essential Fish Habitat (EFH) 5-Year Review (Draft HMS EFH 5-Year Review). The purpose of the Draft HMS EFH 5-Year Review is to gather relevant new information and determine whether modifications to existing EFH descriptions and designations are warranted, in compliance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and implementing regulations. If EFH modifications are warranted, an amendment to the 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) may be initiated.

DATES: Written comments must be received by *[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: Comments may be submitted electronically via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2022-0036” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be

posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of information related to the Draft HMS EFH 5-Year Review, including the Draft HMS EFH 5-Year Review, may be obtained on the HMS Management Division website at: <https://www.fisheries.noaa.gov/action/essential-fish-habitat-5-year-review-0>.

FOR FURTHER INFORMATION CONTACT: Jennifer Cudney, jennifer.cudney@noaa.gov, at 727-824-5399, or Ann Williamson, ann.williamson@noaa.gov, at 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635.

The Magnuson-Stevens Act includes provisions concerning the identification and conservation of EFH (16 U.S.C. 1801 *et seq.*). EFH is defined in 50 CFR 600.10 as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” NMFS must identify and describe EFH, minimize to the extent practicable the adverse effects of fishing on EFH, and identify other actions to encourage the conservation and enhancement of EFH (§ 600.815(a)). EFH maps are presented online in the NMFS EFH Mapper (<https://www.habitat.noaa.gov/apps/efhmapper/>). The most recently available EFH shapefiles may be downloaded from the EFH Data Inventory (<https://www.habitat.noaa.gov/protection/efh/newInv/index.html>). Federal agencies that

authorize, fund, or undertake actions that may adversely affect EFH must consult with NMFS, and NMFS must provide conservation recommendations to Federal and state agencies regarding any such actions (§ 600.815(a)(9)).

Under the current FMP, NMFS uses a two-phase process to update HMS EFH. Phase 1 includes the development of a draft 5-year review, the public comment process, and the publication of a final 5-year review. Phase 1 is initiated approximately 5 years after publication of the most recent EFH action. This draft document constitutes the first part of Phase 1. If there is no new information that warrants updating EFH, then we may choose to retain the previously designated HMS EFH. However, if new information warrants updates, we would initiate Phase 2 of this process, which may include a follow-up action that implements the recommended updates to HMS EFH. The type of follow-up action depends on the outcomes of the 5-year review (*i.e.*, whether it is a simple update, or if it requires an FMP amendment or rulemaking).

EFH 5-year reviews evaluate published scientific literature, unpublished scientific reports, information solicited from interested parties, and previously unavailable or inaccessible data. NMFS announced the initiation of this review and solicited information for this review from the public in a **Federal Register** notice on April 5, 2022 (87 FR 19667). The initial public review/submission period ended on June 6, 2022.

The draft document, developed as part of Phase 1, considers fishing effects, non-fishing effects, environmental changes, and management changes for all HMS, which include tunas (bluefin, bigeye, albacore, yellowfin, and skipjack), sharks, swordfish, and billfishes (blue marlin, white marlin, sailfish, roundscale spearfish, and longbill spearfish). It analyzes new information and data that was not previously included in recent updates to Atlantic HMS EFH, or has become available since publication of our previous EFH action (Amendment 10 to the 2006 Consolidated HMS FMP (82 FR 42329, September 7, 2017)). Upon completion of the Draft HMS EFH 5-Year Review,

NMFS will analyze the information gathered through the EFH review process and determine if subsequent revision or amendment of EFH is warranted.

Each section of the Draft HMS EFH 5-Year Review provides topic-specific guidance on feedback that would be helpful from the public to complete this 5-year review. In general, NMFS invites the public to submit comments, information, and data pertaining to the 10 components of EFH for HMS. In particular, NMFS is seeking:

- New data or information that should be incorporated into future analyses to redefine EFH boundaries for HMS;
- New information on methodologies appropriate for the delineation of HMS EFH;
- New data or information to support new or modifications to existing habitat areas of particular concern (HAPCs) for HMS (or whether existing HAPCS are still needed);
- Information pertaining to the role of prey in HMS EFH designations;
- Information on the adverse effects of fishing and non-fishing activities on EFH; and
- Information or feedback on the inclusion of new actions to promote the conservation and enhancement of HMS EFH that may be adversely affected by certain non-fishing activities.

Authority: 16 U.S.C. 971 *et seq.*, and 1801 *et seq.*

Dated: May 1, 2023.

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